

BEFORE THE MERIT EMPLOYEE RELATIONS BOARD
OF THE STATE OF DELAWARE

Dr. Christine Tomei,
Grievant

v.

Department of Labor
State of Delaware,
Agency

Docket Number 05-06-331

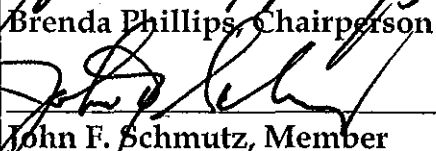
ORDER OF DISMISSAL

Before Brenda C. Phillips, Chairperson, John F. Schmutz, Bernice M. Edwards and Paul R. Houck, Board Members, constituting a quorum of the Board pursuant to 29 Del. C. Section 5908(a).

And now, this ²⁴18th day of August, 2005, it appearing to the Board that the grievant, Dr. Christine Tomei, requests that her grievance be withdrawn (see attached letter from her attorney, and the Department of Labor, through their representative, Ilona Kirshon, Deputy Attorney General, does not object to this request.

IT IS ORDERED that the grievance is withdrawn and this matter is DISMISSED.


Brenda Phillips, Chairperson


John F. Schmutz, Member

Bernice Edwards, member


Paul R. Houck, Member

Original: File
Copies: Grievant
Grievant's Representative
Agency
Agency's Representative
Board
State personnel Office (2 copies)

DATE MAILED Aug. 30, 2005

COPY

ELITOK & HARTNETT AT LAW, L.L.C.

2428 WISCONSIN AVENUE, NW, 2ND FLOOR, • WASHINGTON, DC • 20007 • (202) 965-0529 • (202)-965-0530 -FAX

Date: July 20, 2005

To: Jerry Cutler, Hearing Officer
Yvonne Marshall, Human Resources Office, Delaware Department of Labor
Sandra V. Varano, SPO-Labor Relations

cc: Francis Lally, AFSCME

From: Doug Hartnett, Representative for Employee Dr. Christine Tomei

In Re: Ref. No. 05-0108-DOL-ST3

by Facsimile

This is to notify you that Dr. Christine Tomei hereby withdraws her Grievance referenced above. We have determined that this is not the appropriate forum to pursue her rights.

Sincerely,

F. Douglas Hartnett

Turner Jean (DAS)

From: Tischer Michael (DOJ)
Sent: Friday, July 22, 2005 3:24 PM
To: Kirshon Ilona (DOJ); Turner Jean (DAS); Reardon Allison E (DOJ)
Subject: RE: Christine Tomei

Sounds like another candidate for one of Jean Lee's standard "withdrawal" Orders.

-----Original Message-----

From: Kirshon Ilona (DOJ)
Sent: Friday, July 22, 2005 3:20 PM
To: Turner Jean (DAS); Tischer Michael (DOJ); Reardon Allison E (DOJ)
Subject: FW: Christine Tomei

Christine Tomei filed a termination grievance with the MERB on June 22, 2005 (Docket No. 05-06-331). From the below e-mail exchanges you will see that it was determined that Ms. Tomei's position was covered by the terms of an AFSCME collective bargaining agreement, which provides for arbitration of terminations. The MERB has no jurisdiction over matters covered by collective bargaining. 29 Del.C. § 5938(d) The pre-arbitration process was set in motion, but Ms. Tomei's attorney subsequently decided to withdraw the grievance. See attached letter. You may want to verify that her grievance has been withdrawn.

-----Original Message-----

From: Cutler Jerry M (OMB)
Sent: Friday, July 22, 2005 2:36 PM
To: Kirshon Ilona (DOJ)
Subject: FW: Christine Tomei

Ilona,

Per your request.

Jerry

From: Doug Hartnett [mailto:dhartnett@rcn.com]
Sent: Wednesday, July 20, 2005 10:34 AM
To: Cutler Jerry M (SPO); Marshall Yvonne (DOL); flally@delaware.com
Subject: RE: Christine Tomei

I will fax a signed copy. Sorry to cause confusion in your schedules!

F. Douglas Hartnett
 Elitok & Hartnett at Law, L.L.C.
 2428 Wisconsin Avenue, NW 2nd floor
 Washington, DC 20007
 (202) 965-0529 voice
 (202) 965-0530 facsimile

This message and any attachments may be covered by the attorney-client privilege. Erroneous transmission is not intended to waive this privilege. If you have received this message in error, please notify sender immediately and destroy and/or delete all copies (electronic or paper). Thank you.

7/25/2005

From: Cutler Jerry M (SPO) [mailto:Jerry.Cutler@state.de.us]
Sent: Tuesday, July 19, 2005 11:56 AM
To: Marshall Yvonne (DOL); flally@delaware.com; dhartnett@rcn.com
Subject: RE: Christine Tomei

All,

To bring everyone up to speed, we have agreed to reschedule a grievance meeting for the July 22, 2005 at 10:00 a.m. in my office (the same date, time and place as the originally scheduled Step 3 Grievance Hearing). Because Ms. Tomei held a bargaining unit position prior to her dismissal, the grievance meeting shall be held in accordance with the provisions of the collective bargaining agreement covering her terms and conditions of employment.

Please let me know if you have any questions on this.

Jerry M. Cutler
Manager of Labor Relations
State of Delaware
(302) 577-8977

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From: Cutler Jerry M (SPO)
Sent: Monday, July 18, 2005 3:27 PM
To: Marshall Yvonne (DOL); flally@delaware.com; 'dhartnett@rcn.com'
Subject: Christine Tomei

All,

As you may know, Ms. Tomei recently filed a grievance over her dismissal. A Step 3 Grievance Hearing had been scheduled for July 22, 2005.

It has just come to my attention that Ms. Tomei is covered by a collective bargaining agreement. Upon receiving this information, I contacted AFSCME Representative Fran Lally to apprise him of this information. Mr. Lally has informed me that the Union is asserting its right as the exclusive bargaining representative to review Ms. Tomei's grievance and determine what action should be taken with respect to it under the collective bargaining agreement.

7/25/2005

In order to accommodate the Union's request, I am canceling the Step 3 Grievance Hearing scheduled for July 22, 2005. I am also requesting that Mr. Lally notify me of the Union's intentions as to the grievance by week's end. In addition, I have advised Mr. Hartnett on how to contact Mr. Lally so that he may discuss his role on behalf of Ms. Tomie in the grievance process.

If you have any questions, please feel free to contact me.

Jerry M. Cutler
Manager of Labor Relations
State of Delaware
(302) 577-8977

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7/25/2005